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HOUSE BILL 614

46TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2003

INTRODUCED BY

Henry Kiki Saavedra

AN ACT

RELATING TO CHILD SUPPORT; REQUIRING HEALTH CARE COVERAGE IN
CHILD SUPPORT ORDERS AND THE USE OF THE NATIONAL MEDICAL
SUPPORT NOTICE; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 40-4C-1 NMSA 1978 (being Laws 1990,
Chapter 78, Section 1) is amended to read:

"40-4C-1. SHORT TITLE. -- [~~This act~~] Chapter 40, Article 4C
NMSA 1978 may be cited as the "Mandatory Medical Support Act". "

Section 2. Section 40-4C-2 NMSA 1978 (being Laws 1990,
Chapter 78, Section 2) is amended to read:

"40-4C-2. PURPOSE. -- To assure that children [~~of divorced
and separated parents~~] have access to quality medical care, it
is the purpose of the Mandatory Medical Support Act to require
parents responsible for the support of minor children to

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1 provide or purchase health insurance and dental insurance
2 coverage for those children when such coverage is available
3 [~~through employers or unions~~]. "

4 Section 3. Section 40-4C-3 NMSA 1978 (being Laws 1990,
5 Chapter 78, Section 3, as amended) is amended to read:

6 "40-4C-3. DEFINITIONS. -- As used in the Mandatory Medical
7 Support Act:

8 A. "court" means any district court ordering child
9 support of an obligor;

10 B. "dental insurance coverage" means those
11 coverages generally associated with a dental plan of benefits,
12 not including medicaid coverage authorized by Title [XIX] 19 of
13 the Social Security Act and administered by the [human
14 services] department;

15 C. "department" means the human services
16 department;

17 D. "employer" means [any] an individual,
18 organization, agency, business or corporation hiring an obligor
19 for pay;

20 E. "health insurance coverage" means those
21 coverages generally associated with a medical plan of benefits,
22 not including medicaid coverage authorized by Title [XIX] 19 of
23 the Social Security Act and administered by the department;

24 F. "insurer" [~~includes a group health plan as~~
25 ~~defined in 29 U.S.C. 1167, a health maintenance organization as~~

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1 ~~defined in Section 59A-46-2 NMSA 1978 and a nonprofit health~~
2 ~~care plan organized pursuant to the provisions of Section~~
3 ~~59A-47-4 NMSA 1978]~~ means an employment-related or other group
4 health care insurance plan, a health maintenance organization,
5 a nonprofit health care plan or other type of health care
6 insurance plan under which medical or dental services are
7 provided, regardless of service delivery mechanism;

8 G. "minor child" means a child younger than
9 eighteen years of age who has not been emancipated;

10 H. "national medical support notice" means a court-
11 ordered notice to an employer that an employee's child must be
12 covered by the employment-related group health care insurance
13 plan;

14 [H.-] I. "obligee" means a person to whom a duty of
15 support is owed or a person, including the department, who has
16 commenced a proceeding for enforcement of an alleged duty of
17 support or for registration of a support order, regardless of
18 whether the person to whom a duty of support is owed is a
19 recipient of public assistance; and

20 [H.-] J. "obligor" means a person owing a duty of
21 support or against whom a proceeding for the enforcement of a
22 duty of support or for registration of a support order is
23 commenced. "

24 Section 4. Section 40-4C-4 NMSA 1978 (being Laws 1990,
25 Chapter 78, Section 4) is amended to read:

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1 "40-4C-4. MEDICAL SUPPORT--ORDER. --

2 A. The court shall order an obligor to name the
3 minor child on behalf of whom support is owed as an eligible
4 dependent of health insurance coverage or dental insurance
5 coverage if:

6 (1) health insurance coverage or dental
7 insurance coverage [~~which~~] that meets or exceeds the minimum
8 standards required under the Mandatory Medical Support Act is
9 not available at a more reasonable cost to the obligee than to
10 the obligor for coverage of the minor child; and

11 (2) such health insurance coverage or dental
12 insurance coverage is available to the obligor through an
13 [~~employer or union~~] employment-related or other group health
14 care insurance plan.

15 B. The court may consider the impact of the cost of
16 health insurance coverage or dental insurance coverage on the
17 payment of the base child support amounts in determining
18 whether such insurance coverage shall be ordered.

19 C. The court may order the obligor to obtain health
20 insurance coverage or dental insurance coverage for any minor
21 child to whom support is owed, if:

22 (1) the court finds that health insurance
23 coverage or dental insurance coverage for the minor child is
24 not available to the obligor through an [~~employer or union~~]
25 employment-related or other group health care insurance plan;

1 and

2 (2) the obligee does not have such health
3 insurance coverage or dental insurance coverage available at a
4 more reasonable cost than the obligor for coverage of the minor
5 child.

6 D. The court shall require the obligor to be liable
7 for all or a portion of the medical or dental expenses of the
8 minor child that are not covered by the required health
9 insurance coverage or dental insurance coverage, if:

10 (1) the court finds that the health insurance
11 coverage or dental insurance coverage required to be obtained
12 by the obligor or available to the obligee does not pay all the
13 reasonable and necessary medical or dental expenses of the
14 minor child; and

15 (2) the court finds that the obligor has the
16 financial resources to contribute to the payment of these
17 medical or dental expenses.

18 E. The court shall require the obligor to provide
19 health insurance coverage or dental insurance coverage for the
20 benefit of the obligee if it is available at no additional cost
21 to the obligor.

22 F. The court in any proceeding for the
23 establishment, enforcement or modification of a child support
24 obligation may modify an existing order of support or establish
25 child support, as applicable, for the minor child to

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1 incorporate the provisions for medical support ordered pursuant
2 to the Mandatory Medical Support Act. "

3 Section 5. Section 40-4C-6 NMSA 1978 (being Laws 1990,
4 Chapter 78, Section 6, as amended) is amended to read:

5 "40-4C-6. OBLIGATIONS--EMPLOYERS, [~~AND~~] UNIONS AND
6 INSURERS--PLAN. --

7 A. Upon receipt of a national medical support
8 notice or the court order for health insurance coverage or
9 dental insurance coverage pursuant to Section 40-4C-5 NMSA 1978
10 or upon application of the obligor pursuant to [~~that~~] the court
11 order, the employer or union shall enroll the minor child as an
12 eligible dependent in the health insurance plan or dental
13 insurance plan and withhold any required premium from the
14 obligor's income or wages. If more than one health insurance
15 plan or dental insurance plan is offered by the employer, [~~or~~]
16 union or insurer, the minor child shall be enrolled in the plan
17 in which the obligor is enrolled [~~or the least costly plan~~
18 ~~available to the obligor~~]. If the obligor is not enrolled in a
19 plan, the child shall be enrolled in a plan that meets the
20 minimum coverage criteria required pursuant to the Mandatory
21 Medical Support Act.

22 B. In any instance in which the obligor is required
23 by a court order to provide health insurance coverage or dental
24 insurance coverage for the minor child and the obligor is
25 eligible for health insurance coverage or dental insurance

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1 coverage through an [~~employer or union~~] employment-related or
2 other group health care insurance plan, the employer, union or
3 insurer shall do the following:

4 (1) permit the obligor to enroll for health
5 insurance coverage or dental insurance coverage the minor child
6 who is otherwise eligible for coverage without regard to any
7 enrollment season restrictions;

8 (2) enroll the minor child for health
9 insurance coverage or dental insurance coverage if the obligor
10 fails to enroll the minor child upon application by the obligee
11 or the department;

12 (3) not disenroll or eliminate coverage of any
13 minor child so enrolled unless:

14 (a) the employer is provided with
15 satisfactory written evidence that the court order is no longer
16 in effect;

17 (b) [~~that~~] the minor child is or will be
18 enrolled in comparable health coverage that meets the coverage
19 criteria required pursuant to the Mandatory Medical Support Act
20 and that will take effect not later than the effective date of
21 the disenrollment;

22 (c) the obligor has terminated
23 employment; or

24 (d) the employer has eliminated health
25 insurance coverage or dental insurance coverage for all of its

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1 employees; and

2 (4) withhold from the obligor's compensation
3 the obligor's share, if any, of premiums for health insurance
4 coverage or dental insurance coverage and to pay the share of
5 premiums to the insurer, unless otherwise provided in law or
6 regulation.

7 C. In those instances where the obligor fails or
8 refuses to execute any document necessary to enroll the minor
9 child in the health insurance plan or dental insurance plan
10 ordered by the court, the required information and
11 authorization may be provided by the department or the
12 custodial parent or guardian of the minor child.

13 D. Information and authorization provided by the
14 department or the custodial parent or guardian of the minor
15 child shall be valid for the purpose of meeting enrollment
16 requirements of the health insurance plan or dental insurance
17 plan and shall not affect the obligation of the employer or
18 union and the insurer to enroll the minor child in
19 the health insurance plan or dental insurance plan for which
20 other eligibility, enrollment, underwriting terms and other
21 requirements are met. In instances in which the minor child is
22 insured through the obligor, the insurer shall provide all
23 information to the obligee that may be helpful or necessary for
24 the minor child to obtain benefits.

25 E. A minor child that an obligor is required to

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1 cover as an eligible dependent pursuant to the Mandatory
2 Medical Support Act shall be considered for insurance coverage
3 purposes as a dependent of the obligor until the child is
4 emancipated or until further order of the court.

5 F. In instances in which the minor child is insured
6 through the obligor, the insurer is prohibited from denying
7 health insurance coverage or dental insurance coverage of the
8 minor child on the grounds that the minor child was born out of
9 wedlock, that the minor child is not claimed as a dependent on
10 the obligor's federal income tax return or that the minor child
11 does not reside with the obligor or reside in the insurer's
12 service area.

13 G. In instances in which the minor child is insured
14 through the obligor, the insurer is prohibited from imposing
15 requirements on the department that are different from
16 requirements applicable to an agent or assignee of any other
17 individual covered by the insurer.

18 H. In instances in which the minor child is insured
19 through the obligor, the insurer shall permit the obligee or
20 health care provider, with the approval of the obligee, to
21 submit claims for covered services without the approval of the
22 obligor. The insurer shall make payments on submitted claims
23 directly to the obligee or the health care provider.

24 I. When the obligor is terminated, the employer
25 shall notify the department of the termination."

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1 Section 6. Section 40-4C-9 NMSA 1978 (being Laws 1990,
2 Chapter 78, Section 9) is amended to read:

3 "40-4C-9. AUTHORIZATION FOR CLAIMS. --The signature of the
4 custodial parent of the minor child insured pursuant to a court
5 order or a directive issued by the department is a valid
6 authorization to the health insurer or dental insurer for
7 purposes of processing an insurance reimbursement payment. "

8 Section 7. Section 40-4C-10 NMSA 1978 (being Laws 1990,
9 Chapter 78, Section 10) is amended to read:

10 "40-4C-10. EMPLOYER, [~~OR~~] UNION OR INSURER NOTICE. --When
11 an order for health insurance coverage or dental insurance
12 coverage pursuant to the Mandatory Medical Support Act is in
13 effect, upon termination of the obligor's employment or upon
14 termination of the insurance coverage, the employer, [~~or~~] union
15 or insurer shall make a good faith effort to notify the obligee
16 within ten days of the termination date with notice of
17 conversion privileges. "

18 Section 8. Section 40-4C-11 NMSA 1978 (being Laws 1990,
19 Chapter 78, Section 11) is amended to read:

20 "40-4C-11. RELEASE OF INFORMATION. --When an order for
21 health insurance coverage or dental insurance coverage pursuant
22 to the Mandatory Medical Support Act is in effect, the
23 obligor's employer, [~~or~~] union or insurer shall release to the
24 obligee, upon request, information on such coverage, including
25 the name of the insurer. "

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1 Section 9. Section 40-4C-12 NMSA 1978 (being Laws 1990,
2 Chapter 78, Section 12, as amended) is amended to read:

3 "40-4C-12. OBLIGOR LIABILITY. --

4 A. ~~[The]~~ An obligor who fails to maintain the
5 health insurance coverage or dental insurance coverage for the
6 benefit of a minor child as ordered pursuant to the Mandatory
7 Medical Support Act shall be liable to the obligee for any
8 medical and dental expenses incurred from the date of the court
9 order.

10 B. An obligor who receives payment from a third
11 party for the costs of medical or dental services provided to a
12 minor child and who fails to use the payment to reimburse the
13 department is liable to the department to the extent of the
14 department's payment for the services. The department is
15 authorized to intercept the obligor's tax refund or use other
16 means of enforcement available to the department to recoup
17 amounts paid. Claims for current or past due child support
18 take priority over any claims made pursuant to this subsection.
19 Proof of failure to maintain health insurance coverage or
20 dental insurance coverage as ordered constitutes a showing of
21 increased need by the obligee and provides a basis for
22 modification of the obligor's child support order.

23 C. ~~[If the department is the obligee, the]~~ An
24 obligor is required to provide the department with the
25 following information concerning health insurance coverage or

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1 dental insurance coverage:

2 (1) obligor's name and tax identification
3 number;

4 (2) type of coverage (single or family);

5 (3) name, address and identifying number of
6 health insurance coverage or dental insurance coverage;

7 (4) name and tax identification number of
8 other individuals who are provided health insurance coverage or
9 dental insurance coverage by the obligor;

10 (5) effective period of coverage; and

11 (6) name, address and the tax identification
12 number of the employer. "

13 Section 10. Section 40-4C-13 NMSA 1978 (being Laws 1990,
14 Chapter 78, Section 13, as amended) is amended to read:

15 "40-4C-13. DEPARTMENT--DUTIES.--The department shall
16 implement and enforce an order for health insurance coverage or
17 dental insurance coverage when the minor child receives public
18 assistance or medicaid or upon application of the obligee to
19 the department and payment by the obligee of any fees required
20 by the department. "

21 Section 11. EMERGENCY.--It is necessary for the public
22 peace, health and safety that this act take effect immediately.